

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34230
Docket No. SG-34876
00-3-98-3-595

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet & Eastern Railway Company (EJ&E):

Claim on behalf of D. D. Moser for reinstatement to service with payment for all time, including overtime, lost as a result of his dismissal following an investigation held on September 26, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 76, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him. Carrier’s File No. 144-293. General Chairman’s File No. 97-117-EJE. BRS File Case No. 10749-EJE.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was removed from service by letter dated September 17, 1997, pending an Investigation in connection with alleged violation of Rules 301 and 302 of the Signal Special Instructions. In pertinent part, Rules 301 and 302 state:

“Rule 301:

The bridging of contacts on relays, indicators or any circuit controlling device, or energizing relays or indicators direct from any source which will in any way impair the protection of such circuit controlling devices must be done in accordance with the following instructions:

- a) The use of jumpers for the bridging of contacts is restricted to cases of absolute necessity. . . . The use of jumpers always requires that the protection defeated be provided by some other means. . . .**

Rule 302:

The guiding principle at all times must be that any protection temporarily defeated by the jumper must be provided by some other means until the removal of all jumpers is assured and the original protection is restored.”

The Investigation called by the Carrier alleged that at approximately 11:20 A.M. on September 17, 1997, the Claimant failed to provide proper protection at a crossing. Subsequent to the Investigation held on September 26, 1997, the Claimant was found guilty and assessed dismissal.

The Organization appealed the claim arguing that the Claimant was not provided proper instruction, was inexperienced as to proper procedures and without help or assistance was put into a situation for which he was unprepared. The Organization strongly argues on property and before the Board that the Claimant was unprepared for and lacked knowledge necessary for the proper functioning in his position as Signaller. By letter of February 5, 1998, the Organization points to the fact that the harsh and excessive discipline was certainly not called for in this case. The Organization notes that the Claimant had previously worked only in construction with another Carrier and had never been provided the necessary training required.

The facts of record indicate that the Claimant was called to 5th Avenue in Gary, Indiana, to work with a surfacing gang on Main 2. The Claimant testified that he put jumpers on Main 2 and then provided protection. He was then called to the Ivanhoe Interlocking to repair a broken track wire. The testimony of record from Supervisor Signal, Communication and Electrical is that the Claimant admitted to his failure to provide protection and to his error in deactivating both Main 2 and Main 1 by mistake. The facts of record are undisputed that Train 659 approached 5th Avenue on Main 1 and when the gates did not go down the Engineer put the train into emergency stopping on the busy street without injury.

The Board has carefully considered all of the facts. There is no dispute about the Claimant's guilt in failing to properly provide the necessary protection after deactivating. When asked if he placed a "stop and flag order for West 5th Avenue?" the Claimant stated that "No I did not." When asked about the incident, the Claimant testified that:

"I stayed at 5th Avenue to ensure protection that I defeated by putting jumpers on. I thought jumpers were just on Main 2. Then the track foreman, Mr. Maisel started calling me on the radio telling me that dispatcher or control operator could not get signal for crossing traffic on Conrail. It was a hot move, had to run train right now. Not thinking, I ran down to take care of the problem. At that time I did not know of the westbound train, the EJE."

There can be no dispute that the Claimant was at fault. He admitted to the action that left the crossing unprotected. He admitted to being in error and "not thinking." His failure to consider his actions violated the cited Rules and could have been disastrous.

What is important for the Board to consider is whether as the Organization argues the Claimant's responsibility was mitigated due to alleged violation by the Carrier of Safety Rules. The Organization alleged that the Carrier violated Rule 1.46 in that his Foreman did not know what the Claimant was doing or that the Claimant was fully capable of performing his assignment. There is insufficient evidence to support such a finding. Similarly, the Organization alleges Carrier violation of Rule 1.49 in assigning an inexperienced employee to a job for which he was not trained. The evidence of record shows that the error was due to forgetting to reactivate the crossing

or to “not thinking” in leaving the crossing without protection. There is no evidence of record that the work the Claimant failed to perform was work that he was not properly trained to perform. Nor is there evidence of probative value that Rule 1.50 was violated by the Carrier in failing to provide two employees to perform the job. What the record indicates is the Claimant knew the Rules, had training necessary to perform the job herein at issue and failed to perform it appropriately.

Having found the evidence sufficient to support the Carrier’s determination of guilt, the only remaining question is the severity of the discipline assessed. Herein we cannot find the Carrier’s discipline arbitrary, capricious or harsh. The record indicates that the Claimant received training on this very same equipment only a few months prior to this instance. The record also indicates that this was the second time he failed to reconnect crossing protection. The Claimant failed to reactivate crossing protection less than five months earlier and accepted responsibility, discipline and counseling as to proper procedures. Such error can result in serious damage and loss of life. The Board will not interfere with the Carrier’s determination that its discipline was appropriate in this instance. The claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August, 2000.